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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 18th March 2015

No. 2565–IR(ID)-29/2015–LESI—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 21st February 2015 in I.D. Case No. 58/2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of (1) M/s Raxak Security Services, Near Purnima Gate, Pallaspalli, Bhubaneswar (2) Raxak Security Services, Vithal Udyog Nagar, Ananda, Gujrat and their Workman Shri Hararanjan Chand Mohanty was filed by the above mentioned workman under Section 2-A(2) of I.D. Act, 1947 for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 58 OF 2013 [under Section 2-A(2)]

Dated the 21st February 2015

Present :

Shri B. C. Rath, , O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Managements of . . . First Party—Managements
(1) Branch Manager, Raxak Security Services,
Plot No. 565, Jaya Bhabani Complex,
Near Purnima Gate, Paliaspalli,
Bhubaneswar-20.
(2) The Managing Director,
Raxak Security Services,
Qrs. No. LIG/II, 15-16, GIDC Colony,
Vithal Udyog Nagar, Ananda, Gujrat.

And

Its Workman

Shri Hararanjan Chand Mohanty,
S/o Late D. D. Mohanty,
Vill. Kumbharpully, Pankelapalli,
P.O. Ankuli, Berhampur,
Dist. Ganjam.

.. Second Party—Workman

Appearances :

For the First Party—Management

.. Shri P. K. Patra & S. Mishra,
Advocates

For the Second Party—Workman

.. Shri T. Lenka, Advocate

AWARD

The second party workman has preferred the present application resorting to the provisions of Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') with a prayer for declaring the termination of his service by way of refusal of employment with effect from the 11th March 2011 as illegal and unjust and to direct the first party management to reinstate him in service with full back wages, continuity of service and all other consequential service benefits.

2. The factual backdrop of the case relevant for the purpose of appreciation of the dispute between the parties may be narrated as follows :

It is the claim of the second party workman that he joined as an Office Assistant under the first party management in its branch office at Bhubaneswar on the 1st June 2010 pursuant to the appointment letter (Ext.1) allegedly issued by Shri R. K. Pandey, Managing Director of the first party management. It is alleged that the first party management neither paid salary to him regularly nor took any step to enrol him under the ESI and EPF Schemes for which the second party workman raised his voice to such irregularities. At this, the first party management bore a grudge and transferred him to Durgapur where he worked for the period from the 1st November 2010 to the 28th February 2011. Thereafter he was again brought to the branch office of the first party management at Bhubaneswar. When he was working in the above capacity in Bhubaneswar branch office of the first party management, on the 11th March 2011 he was not allowed to perform his duty and was told that his service had been terminated. According to him, he was only paid two month's salary inspite of his rendering service under the first party management continuously and uninterruptedly for a period of about ten months. It is his stand that such refusal of service without any notice or notice pay and compensation as contemplated under the provisions of Section 25-F of the Act is illegal and unjustified which needs to be intervened by this Tribunal and he is entitled to be reinstated in service with full back wages and other service benefits including his arrear dues. Further, it has been asserted that the second party workman is a 'workman' and the first party management is an 'industry' as defined under the Act. Further assertion of the second party workman is that consequent upon his illegal termination he moved the labour machinery of the State Government challenging termination of his service by the first party management but as no action was taken after lapse of three months of his filing complaint before the labour machinery he has approached this Tribunal directly resorting to the provisions of Section 2-A(2) of the Act.

3. The first party management has entered into a contest denying the allegations raised by the second party workman in toto. The first party management has refuted the allegations contending that no appointment letter was ever issued to the second party and as such he was not a 'workman' under its employment. Having not been employed at any point of time in the establishment of the first party, question does not arise about termination of his service in the guise of refusal of employment. Challenging the documents filed by the second party workman, it has been asserted that the same are self created documents. As the second party workman had never served under the first party management, the application preferred by him under Section 2-A (2) of the Act is not maintainable and the same is liable for dismissal.

4. Taking into consideration the pleadings of the parties, the following Issues have been settled :

Issues

- (i) "Whether the case is maintainable ?
- (ii) Whether the termination of service by way of refusal of employment of Hararanjan Chand Mohanty, Office Assistant with effect from the 11th March 2011 by the management of Raxak Security Service, Plot No. 565, Jaya Bhabani Complex, Near Purnima Gate, Pallaspalli, Bhubaneswar-20 is legal and/or justified?
- (iii) If not, what relief Shri Mohanty is entitled to" ?

5. In order to prove their respective stand each side has examined one witness and pressed certain documents into evidence. The second party workman has examined himself and relied upon documents marked Exts.1 to 7 to establish his claim, whereas the first party management has examined its Senior Manager and relied upon documents marked Exts. A to D to counter the claim of the second party workman.

FINDINGS

6. *Issue Nos. (i) & (ii)*—Having regard to the pleadings of the parties, it is felt appropriate to take up both the issues for convenience and better appreciation of the dispute.

In view of specific denial of the first party management regarding employment of the second party workman in its establishment and the issue regarding termination of his service by way of refusal of employment with effect from the 11th March 2011, the second party workman is first required to prove that he was under the employment of the first party management and had rendered continuous and uninterrupted service under it for a period of more than 240 days. Coming to the evidence adduced by the second party workman in this regard it is seen that besides his oral claim of being employed as an Office Assistant in the branch office of the first party management at Bhubaneswar with effect from the 1st June 2010, the second party workman has relied upon two documents allegedly issued to him in the office pad of the first party management. According to him, Ext.1 is the Xerox copy of his appointment letter appointing him as an Office Assistant and Ext.2 is the Xerox copy of his transfer order instructing him to join at Durgapur. He has stated that both the letters were issued under the signature of Shri R. K. Pandey, the Managing Director of the first party management and pursuant to such orders he first joined in the Bhubaneswar branch office as Office Assistant on the 1st June 2010 and on his transfer he joined at Durgapur on the

1st November 2010. It is his evidence that he was brought back to Bhubaneswar Office where he worked till the 10th March 2011. On the contrary, M.W. No. 1 has claimed in his evidence that neither the appointment letter nor the transfer order vide Exts. 1 and 2, respectively was issued by the first party management. Filing a format of appointment letter of its establishment under Ext. A it has been contended that the second party workman was never engaged in the office of the first party management or issued with any appointment letter.

7. Law is well settled that in order to obtain any relief under the provisions of the Act, burden lies on the claimant to establish that he was under the employment of the management as a 'workman' as defined under Section 2(s) of the Act and his continuance under management for a continuous period of 240 days. When the first party management has taken a specific stand that the second party workman was never served under it as a 'workman' it has become the burden duty of the second party workman to produce credible and unimpeachable evidence to establish the aforesaid aspect. No step seems to have been taken on behalf of the second party workman asking the first party management to cause production of the Attendance Register, Payment Register etc. to establish that he was ever employed as an Office Assistant under the first party management and was being paid wages on the Muster Roll/Wage Register. Further, on a close scrutiny of the so called appointment letter, Ext. 1 it is found that it is a Xerox copy and no explanation is coming-forth from the second party workman as to why such secondary evidence has been pressed into evidence instead of filing the original of Ext. 1. The contents of Ext. 1 allegedly in the pad of the first party management run as follows :

"Subject—Reference to your appointment order please welcome & attention, highly developed open of our new office Raxak Security Service Organisation, Bhubaneswar, Odisha Branch (India) for management, placements, quotations, discussions, client meetings, manpower operation and all enrolments etc. deals with Branch head to you.

Dear Mr. H. R. C. Mohanty, Ex-Army. H/Lt. Welcome to Raxak Security Services, Bhubaneswar, Odisha.

I am pleased to offer you employment in the position of C. M. (Admn. Branch Head)- Operation (Odisha) with Raxak Security Services.

I am eager to have you as part of our team, I foresee your potential skills as a valuable contribution to our company and clients. Your appointment as C. M. (Admn. Branch Head)-Operation will commence on the 1st June,2010/11.

As C. M. you will be entitled to a monthly starting remuneration of Rs.10,000 + EB Rs. 500 = Rs. 12,000 (Rupees Twelve thousand only).

Only which indicates cost to company. You will be on a probation period of six months. Regular performance review will be conducted to assess your performance and suitability. Your continued employment at Raxak Security Services is dependent on your successful completion of the probationary period. You will be entitled to all allowances, T. A., D. A. and other benefits whatsoever decided by the management of R.S.S., India. You shall receive your payment before 7th day of every month."

On going through the contents of Ext.1 it can be inferred that the said letter was issued with reference to appointment order of the second party. In the first line of the letter offer seems to have been given to the second party workman to work as C. M. (Admn. Branch Head) with entitlement of a salary of Rs. 12,000 per month. The letter further indicates that such employment was with a probation period of six months and regularisation was subject to review of the performance and security of the second party workman.

The contents of the so called transfer order under Ext. 2 read as under :—

“Subject—Reference to your transfer order from Bhubaneswar, Odisha branch office to newly open branch at Durgapur in the district of Burdwan, Kolkata, West Bengal.

Dear Er. H.R.C. Mohanty please welcome and joined at Durgapur Branch and Pallaspathi Branch zone in-charge head of Raxak Security Services. With reference your Durgapur Branch head with effect from 1st November 2010. For deployment of trained, EX-SM Security personnels manpower operation of New unit ELECON Engineering Co. Ltd., sites at DVC Mejia, Durgapur Steel Plant, Burnpur Steel Plant, Thermal Power Project and Joy Balaji Industries Ltd., Unit-III, Banskopa. You will be entitled to a monthly starting net pay Rs.15,000-EB-Rs. 500=Rs.17,000 (Rupees Seventeen Thousand) only which indicates cost to company regular performance by the Management of RSS(India). You will be entitled to all allowances, T.A., D.A. & other benefits whatsoever decided by the Company.”

On a mere reading of the above contents in Ext. 2 it can be concluded that the second party was given employment at Durgapur Branch head. Both the letters, i.e. Exts. 1 and 2 are not in the shape of usual appointment letter or transfer order. For argument sake if both the letters are accepted to have been issued by the first party management, the second party workman was supposed to have received an earlier appointment order and his transfer order from Durgapur to Bhubaneswar. But the second party workman has not filed any other scrap of paper in that respect. Further, in his evidence the second party workman has claimed to have received wages/salary for two months. No. document is also pressed into evidence in support of such testimony. When the authenticity of the above documents has been challenged by the first party management, the second party workman should be more diligent and should have produced the originals thereof. Moreover, when he has claimed to have been transferred from Durgapur to Bhubaneswar he must have been communicated in writing and such written order could have been pressed into evidence. Non-production of the above documents creates a doubt on the claim/relief sought for by the second party workman. In the facts and circumstances when the second party workman has failed to establish his employment under the first party management, the question of his termination in the guise of refusal of employment does not arise at all.

8. Further, if Ext. 1 is accepted to have been issued by the first party management for argument sake, on a close reading of the same it can be said that the second party workman was offered employment to work as the C.M. (Admn. Branch head) on a Salary of Rs. 12,000 per month. ‘Workman’ as defined under Section 2(s) of the Act means—any person(including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and who being employed in a supervisory capacity shall not draw wages exceeding ten thousand rupees per mensem. Neither the oral evidence nor the documents pressed into evidence on behalf of the second party workman disclose the nature of work entrusted to him. Rather, on a mere reading of the so called appointment letter, Ext. 1 it can be inferred that he was employed as C.M.(Chief Manager), Admn. Branch head and his monthly salary was more than Rs. 10,000. In that view of the matter, the second party does not seem to have been covered under the definition of ‘workman’ in order to claim any relief under the Act.

9. In the result, it is concluded that the second party has failed to establish through credible and unimpeachable evidence that he was ever employed under the first party management or he comes under the definition of 'workman' in order to succeed in the case.

Accordingly, the issues are answered in the negative as against the second party-workman.

10. *Issue No. (iii)*—In view of my findings arrived at on Issue Nos. (i) and (ii), the second party workman is not entitled to any relief.

The case is disposed of accordingly.

Dictated and corrected by me.

B. C. RATH

21-2-2015

Presiding Officer
Industrial Tribunal, Bhubaneswar.

B. C. RATH

21-2-2015

Presiding Officer
Industrial Tribunal, Bhubaneswar.

By order of the Governor

M. NAYAK

Under-Secretary to Government